



U.S. Department of Justice

Immigration and Naturalization Service

MI

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

FILE: [REDACTED] Office: Nebraska Service Center

Date:

DEC 13 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under § 244 of the
Immigration and Nationality Act, 8 U.S.C. 1254a

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who alleges to have been present in the United States without a lawful admission or parole on November 25, 1998. The applicant filed the present application in March 1999. Prior to the adverse decision dated March 27, 2000, the applicant provided one affidavit by Helen Pinto, identified by a telephone number and social security number, that the applicant worked for her as a baby sitter from November 27, 1998 until January 12, 1999. The acting director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish her residence in the United States prior to December 30, 1998 and her continuous physical presence in the United States since January 5, 1999.

On appeal, counsel submits another affidavit from [REDACTED] this time with address, who repeats that the applicant worked for her from November 27, 1998 until January 12, 1999. Counsel also submits an affidavit from [REDACTED] the applicant's landlord, who asserts that the applicant lived in one of his rental properties with [REDACTED] asserts that [REDACTED] signed a rental application on January 2, 1999 adding the applicant's name to the lease application. Mr. [REDACTED] states that he knows that the applicant was living with Mr. [REDACTED] at least four weeks before Mr. [REDACTED] signed the rental application.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national of a state designated under § 244(b) of the Act;
- (b) Has been continuously physically present in the United States since January 5, 1999;
- (c) Has continuously resided in the United States since December 30, 1998;
- (d) Is admissible as an immigrant;
- (e) Is not ineligible under 8 C.F.R. 240.4; and
- (f)(1) Registers for TPS during the initial registration period, between January 5, 1999 and July 5, 1999 or (2) during any subsequent extension of such designation, in this case to August 20, 1999, if the applicant meets certain requirements.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service,

including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

The applicant's affidavits submitted on appeal are unsupported by probative evidence. Consequently, the acting director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.